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BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

In the Matter of the Request for a Hearing on)	OAH No. 2007080
Citations and Desist and Refrain Order issued by)	
the California Corporations Commissioner,)	File No.: 100-2994
)	
Complainant,)	Statement in Support of Citations and
)	Desist and Refrain Order
v.)	
)	
Jean-Paul Carbonez, doing business as)	
Instant Cash)	
)	
Respondent.)	

Complainant, the California Corporations Commissioner, (“Commissioner”) is informed and believes, and based upon such information and belief, alleges and charges Respondent as follows:

INTRODUCTION

On January 31, 2006, the Commissioner of the California Department of Corporations (“Department”) issued to Respondent, Jean-Paul Carbonez, doing business as Instant Cash, a deferred deposit transaction originator license (File No. 100-2994) pursuant to the California Deferred Deposit Transaction Law (“CDDTL”). The CDDTL is found in California Financial Code sections 23000 et seq. (Future section references are to the Financial Code unless indicated otherwise.)

1 The Commissioner is responsible for enforcing all provisions of the CDDTL. Pursuant to
2 section 23050 and 23058, on August 7, 2007, the Commissioner issued Citations and a Desist and
3 Refrain Order to Respondent for violations of the legal standards required of all deferred deposit
4 transaction originators. Respondent timely requested a hearing concerning the Department's action.

5 I

6 FACTS AND PROCEDUAL BACKGROUND

7 1. Respondent Jean-Paul Carbonez, doing business as Instant Cash, is a sole proprietorship
8 whose owner is Jean-Paul Carbonez ("Carbonez"). Carbonez filed Respondent's CDDTL
9 application and stated that he is designated as the person in charge of Respondent's place of
10 business. Subsequently, Respondent engaged in CDDTL business at 24050 Alessandro Boulevard,
11 A-4, Moreno Valley, California 92550, after the Commissioner issued him a license pursuant to
12 section 23005, subdivision (a).

13 2. Since at least January 2006 Respondent engaged in the business of deferred deposit
14 transactions by offering, originating and making deferred deposit transactions as described below.

15 3. A deferred deposit transaction is a written transaction whereby one person gives funds
16 to another person upon receipt of a personal check and it is agreed that the personal check shall
17 not be deposited until a later date. These transactions are sometimes referred to as "payday
18 advances" or "payday loans."

19 4. Respondent filed with the Department an application (File No. 100-2994) for a license to
20 make deferred deposit transactions in May 2005, which includes his Declaration, designated as
21 "Exhibit K" that Carbonez signed under penalty of perjury for Respondents, which states:

22 **I (we) have obtained and read copies of the California Deferred Deposit**
23 **Transaction Law (Division 10 of the California Financial Code) and the Rules**
24 **(Chapter 3, Title, 10, California Code of Regulations) and am familiar with**
25 **their content: and,**

26 **I (we) agree to comply with all the provision[s] of the California Deferred**
27 **Deposit Transaction Law, including any rules or orders of the Commissioner**
28 **of Corporations.**

Respondent's Declaration to the application also states that "by signing this declaration" "the applicant hereby agrees (or attests) or declares understanding of the following items listed below:

1. That the applicant will submit to periodic examinations by the Commissioner of Corporations as required by the California Deferred Deposit Transaction Law.
2. That the applicant will keep and maintain all records for 2 years following the last entry on a deferred deposit transaction and will enable an examiner to review the record keeping and reconcile each consumer deferred deposit transaction with documentation maintained in the consumer's file records.
3. That the applicant understands the examination process involving the reconciliation of records will be facilitated if the applicant maintains, at minimum, a ledger or listing of the following current and undated information for each deferred deposit transaction (as specified in Financial Code section 23035): customer's name and address, account number, check number, amount provided, fee, amount of check, corresponding annual percentage rate (e.g. 14-day or 30-day) and the deferred due date.
4. That the applicant will maintain a file of all advertising for a period of 90 days from the date of its use, which will be available to the Commissioner of Corporations upon request.
5. That the applicant will file with the Commissioner of Corporations an amendment to this application prior to any material change in the information contained in the application for licensure, including, without limitation, the plan of operation.
6. That the applicant will file with the Commissioner of Corporations any report required by the Commissioner.
7. That the applicant hereby attests that the applicant (including officers, directors and principals) has not engaged in conduct that would be cause of denial of a license.

5. On May 8, 2005, Respondent completed another Declaration designated as "Exhibit L" to the application, which Carbonez signed under penalty of perjury stating:

1. The applicant will comply with all federal and state laws and regulations (including Division 10, commencing with Section 23000, of the Financial Code), if it offers, arranges, acts as an agent for, or assists a deferred deposit originator in the making of a deferred deposit transaction (Financial Code Section 23037(i).)

6. On January 31, 2006, a letter accompanied the Commissioner’s issuance of a CDDTL license to Respondent, which informed him of the following facts:

[T]here are certain obligations and responsibilities that a licensee must comply with. The following information about a licensee’s obligations and responsibilities regarding certain requirements of the California Deferred Deposit Transaction Law is provided for your reference . . . a licensee should review and become familiar with all provisions of the law and rules and regulations. . . .

5. A licensee is subject to statutory books and records requirements . . . (Section 23024.)

7. Notwithstanding knowledge regarding the CDDTL requirements, Respondent willfully and knowingly engaged in CDDTL violations. The Department examiner’s review of Respondent’s business revealed multiple violations of the CDDTL, warranting the issuance of Citations and a Desist and Refrain Order. The Commissioner seeks to have his actions upheld.

II

DEFERRED DEPOSIT TRANSACTION LAW

8. As a licensee, Respondent is required to comply with basic legal requirements imposed on all CDDTL licensees, which are described below.

9. Section 23007 requires a licensee to maintain a minimum net worth of \$25,000 and, in relevant part, states:

The applicant shall file with the application financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars (\$25,000).

10. California Code of Regulations, title 10, section 2025, subdivision (b) specifies that books and records must be maintained for two (2) years, as set forth below.

A licensee shall maintain the following books, records and accounts at the licensed place of business provided in its long form application, provided that records maintained at the each additional location are available at the licensed location within 24 hours of request: records demonstrating minimum net worth requirements in compliance with *Section 23007 of the Financial Code* including quarterly unaudited balance sheets. . . .

1 11. Section 23035 sets forth the requirements of the notice that must be provided to
2 potential customers about deferred deposit transactions and in relevant states:

3 (c) Before entering into a deferred deposit transaction, licensees shall
4 distribute to customers a notice that shall include, but not be limited to, the
5 following:

6 (1) Information about charges for deferred deposit transactions.

7 (2) That if the customer's check is returned unpaid, the customer may
8 be charged an additional fee of up to fifteen dollars (\$15).

9 (3) That the customer cannot be prosecuted in a criminal action in
10 conjunction with a deferred deposit transaction for a returned check
11 or be threatened with prosecution.

12 (4) The department's toll-free telephone number for receiving calls
13 regarding customer complaints and concerns.

14 (5) That the licensee may not accept any collateral in conjunction with
15 a deferred deposit transaction.

16 (6) That the check is being negotiated as part of a deferred deposit
17 transaction made pursuant to Section 23035 of the Financial Code
18 and is not subject to the provisions of Section 1719 of the Civil
19 Code. No customer may be required to pay treble damages if this
20 check does not clear.

21 12. Section 23035 subdivision (d) sets forth some of the requirements of the written
22 agreements for deferred deposit transactions and states:

23 (d) The following notices shall be clearly and conspicuously posted in the
24 unobstructed view of the public by all licensees in each location of a
25 business providing deferred deposit transactions in letters not less than
26 one-half inch in height:

27 (1) The licensee cannot use the criminal process against a
28 consumer to collect any deferred deposit transaction.

(2) The schedule of all charges and fees to be charged on those
deferred deposit transactions with an example of all charges and
fees that would be charged on at least a one-hundred-dollar (\$100)
and a two-hundred-dollar (\$200) deferred deposit transaction,
payable in 14 days and 30 days, respectively, giving the
corresponding annual percentage rate. The information may be
provided in a chart as follows: . . .

13. Section 23035 subdivision (e) states:

(e) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

(1) A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States currency and as an APR as required under the Federal Truth In Lending Act and its regulations.

(2) A clear description of the customer's payment obligations as required under the Federal Truth In Lending Act and its regulations.

(3) The name, address, and telephone number of the licensee.

(4) The customer's name and address.

(5) The date to which deposit of check has been deferred (due date).

(6) The payment plan, or extension, if applicable as allowed under subdivision (c) of Section 23036.

(7) An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.

(8) Disclosure of any returned check charges.

(9) That the customer cannot be prosecuted or threatened with prosecution to collect.

(10) That the licensee cannot accept collateral in connection with the transaction.

(11) That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

(12) Signature space for the customer and signature of the licensee or authorized representative of the licensee and date of the transaction.

(13) Any other information that the commissioner shall deem necessary by regulation.

III

DEFERRED DEPOSIT TRANSACTION LAW VIOLATIONS

14. On June 4, 2007, the Commissioner's examiner visited Respondent's business after giving the licensee advance notice of the Department's regulatory examination.

15. The Commissioner's examiner found Respondent violated section 23007 and the California Code of Regulations, title 10, section 2025 because he failed to provide evidence he met the net worth requirement of \$25,000 statutory minimum. He did not have a quarterly balance sheet at the time of the examination and failed to provide it within 24 hours to the Department.

1 16. The Commissioner’s examiner found Respondent failed to distribute a written notice to
2 consumers before entering into deferred deposit transactions with consumers, which violates
3 section 23035, subdivisions (c)(4) and (c)(6). Specifically, Respondent failed to provide notice
4 to consumers about the Department’s toll-free telephone number and that deferred deposit
5 transactions were not subject to section 1719 of the Civil Code and that a customer would be
6 required to pay treble damages if a check does not clear.

7 17. Additionally, the Respondent’s signage did not disclose to customers that Respondent
8 can not use the criminal process against a consumer to collect any deferred deposit transaction as
9 required by section 23035, subdivision (d)(1).

10 18. Respondent also failed to post the schedule of fees that contain a schedule of all charges
11 and fees that would be charged as required by section 23035, subdivision (d)(2).

12 19. Lastly, Respondent’s written agreement contained incorrect Annual Percentage Rates,
13 which violates section 23035, subdivision (e)(1).

14 20. Respondent was informed about the above-described violations at the time of
15 the Department’s regulatory examination.

16 21. On August 7, 2007, the Commissioner issued to Respondent “Citations and Desist and
17 Refrain Order” citing it for six violations of the CDDTL. Respondent’s Citations are quoted below:

18 **Citation A.** Licensee failed to include the Department’s toll free number, which is
19 1-(866) Ask Corp (275-2677), in the notice distributed to the customer prior to
20 entering into the agreement in violation of Financial Code section 23035 (c) (4).

21 **Citation B.** Licensee failed to include disclosure that the check is being negotiated
22 as part of a deferred deposit transaction pursuant to section 23035 of the Financial
23 Code and is not subject to the provisions of 1719 of the Civil Code and that no
24 customer shall be required to pay treble damages if the check does not clear in the
25 notice distributed to the customer prior to entering into the agreement in violation of
26 Financial Code section 23035 (c) (6).

27 **Citation C.** Licensee failed to disclose the correct Annual Percentage Rate in the
28 Agreements in violation of California Financial Code sections 23035(e)(1).

- 1 **Citation D.** The notice required to be conspicuously posted in the unobstructed view of
- 2 the public in letters not less than ½ inch in height did not include the disclosure that the
- 3 licensee cannot use the criminal process against a consumer to collect any deferred
- 4 deposit transaction in violation of California Financial Code section 23035 (d) (1).
- 5 **Citation E.** The notice required to be conspicuously posted in the unobstructed view of
- 6 the public in letters not less than ½ inch in height did not contain a schedule of all the
- 7 fees and charges that would be charged on deferred deposit transactions with an example
- 8 of the fees and charges that would be charged on at least a \$100 and \$200 deferred
- 9 deposit transaction, payable in 30 days, giving the corresponding annual percentage rate
- 10 in violation of Financial Code section 23035 (d) (2)
- 11 **Citation F.** Licensee failed to maintain records demonstrating minimum net worth of
- 12 \$25,000 in compliance with California Financial Code Section 23007, including quarterly
- 13 unaudited balance sheets, in violation of California Code of Regulations section 2025 (b).
- 14 22. Pursuant to section 23058, Respondent was ordered to pay to the Commissioner a
- 15 total penalty of \$10,000. The penalty for each of Respondent’s citations is shown below.
- 16 **Citation A.** \$1,500
- 17 **Citation B.** \$1,500
- 18 **Citation C.** \$1,500
- 19 **Citation D.** \$1,500
- 20 **Citation E.** \$1,500
- 21 **Citation E.** \$2,500

IV

COMMISSISONER’S AUTHORITY TO ISSUE CITATIONS

Section 23058 gives the Commissioner’s authority to issues citations and states:

- (a) If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of deferred deposit transactions without a license, or a licensee or person is violating any provision of this division or any rule or order thereunder, the department may issue a citation to that person in writing, describing with particularity the basis of the citation.

Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$ 2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 30 days from the receipt of the citation of the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

V

COMMISSISONER'S AUTHORITY TO ISSUE A DESIST AND REFRAIN ORDER

Respondent engaged in deferred deposit transactions that violated the CDDTL. Section 23050 provides in pertinent part:

Whenever, in the opinion of the commissioner, any person is engaged in the business of deferred deposit transactions, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division.

Pursuant to section 23050, the Commissioner ordered Respondents to desist and refrain from engaging in the business of deferred deposit transactions in the State of California in violation of California Financial Code sections 23007, 23035, subdivisions (c)(4), (c)(6), (d)(1), (d)(1) and (e)(1) and California Code of Regulations, title 10 section 2025, subdivision (b). The Commissioner's Desist and Refrain Order was properly issued and necessary for the protection of consumers and consistent with the purposes, policies and provisions of the CDDTL.

CONCLUSION

Complainant finds by reason of the foregoing that Respondent Jean-Paul Carbonez, doing business as Instant Cash, violated California Financial Code sections 23007, 23035, subdivisions (c)(4), (c)(6), (d)(1), (d)(2) and (e)(1) and California Code of Regulations, title 10, section 2025, subdivision (b). Therefore, the Commissioner is justified in issuing Citations to Respondent pursuant to section 23058 and is also justified in issuing a Desist and Refrain Order to Respondent pursuant to section 23050.

THEREFORE IT IS PRAYED THAT:

1. Respondent be ordered to immediately pay to the Commissioner an administrative penalty in the total amount of ten thousand dollars (\$10,000) for Citations A through F described above; and,
2. The Desist and Refrain Order issued pursuant to Financial Code section 23050 be upheld to prohibit Respondent from violating Financial Code sections 23007, 23035 and California Code of Regulations, title 10, section 2025.

Dated: August 22, 2007
San Francisco, California

Respectfully submitted,

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____

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